

**Hearing Date and Time: 10/03/2019 at 1:30 p.m.**

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UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF NEW YORK

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In re:	)	
Absolut Facilities Management, LLC, <i>et al.</i> ,	)	Case No. 19-76260-ast
	)	Case No. 19-76263-ast
	)	Case No. 19-76267-ast
	)	Case No. 19-76268-ast
	)	Case No. 19-76269-ast
	)	Case No. 19-76270-ast
Debtors. <sup>1</sup>	)	Case No. 19-76271-ast
	)	Case No. 19-76272-ast
	)	(Jointly Administered)
	)	

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**AMENDED LIMITED OBJECTION OF CAPITAL FUNDING, LLC TO  
 DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL  
 ORDERS (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION  
 FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2),  
 364(d)(1), AND 364(e) AND (B) USE CASH COLLATERAL PURSUANT  
 TO 11 U.S.C. § 363, (C) GRANTING ADEQUATE PROTECTION PURSUANT  
 TO 11 U.S.C. §§ 361, 362, 363, AND 364, AND SCHEDULING FINAL HEARING  
PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Absolut Facilities Management, LLC (1412); Absolut Center for Nursing and Rehabilitation at Allegany, LLC (7875); Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC (8266); Absolut Center for Nursing and Rehabilitation at Gasport, LLC (8080); Absolut at Orchard Brooke, LLC (1641); Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC (8300); Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC (8133); and Absolut Center for Nursing and Rehabilitation at Westfield, LLC (7924).

Capital Funding, LLC (“Capital Funding”), by its attorneys, Whiteford, Taylor & Preston LLP, respectfully submits this Amended Limited Objection to the Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) Use Cash Collateral Pursuant to 11 U.S.C. § 363, (C) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (D) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) [Docket No. 4].

1. Prior to the commencement of the Debtors’ bankruptcy cases, the owners of certain properties that are leased to the Debtors, borrowed funds from Capital Funding. The proceeds were used to finance or refinance various nursing home and senior living facility projects. The loans are insured by the Federal Housing Administration, a unit of the United States Department of Housing and Urban Development (“HUD”).

2. As security for the loans, the owners/landlords granted to Capital Funding and HUD security interests in, among other things, the real property and the leases. In addition, as required by Capital Funding and HUD as a condition of making the loans, the Debtors granted to Capital Funding and HUD security interests in all of their property related to the projects, including licenses, Medicare and Medicare Provider Agreements, accounts, and health care insurance receivables.

3. Pursuant to an Intercreditor Agreement, as amended, between Capital Funding and Capital Finance, LLC, which provided the Debtors with working capital loans, Capital Funding’s security interests in certain of its collateral was subordinated to that of Capital Finance.<sup>2</sup>

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<sup>2</sup> Pursuant to a Subordination and Modification Agreement between Axis Capital, Inc. and Capital Funding, Axis Capital subordinated its security interest in certain of Absolut Center for Nursing and

4. The projects include (i) Absolut Center for Nursing and Rehabilitation at Allegany, operated by Absolut Center for Nursing at Allegany, LLC, pursuant to which 2178 N. Fifth Street, LLC borrowed from Capital Funding \$3,510,500, on or about May 21, 2009; (ii) Absolut Center for Nursing and Rehabilitation at Gasport, operated by Absolut Center for Nursing and Rehabilitation at Gasport, LLC, pursuant to which 4540 Lincoln Drive, LLC borrowed from Capital Funding \$2,787,900, on or about May 21, 2009; (iii) Absolut Center for Nursing and Rehabilitation at Aurora Park, operated by Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC, pursuant to which 292 Main Street, LLC borrowed from Capital Funding \$31,672,000, on or about June 16, 2011; (iv) Absolut Center for Nursing and Rehabilitation at Orchard Park and Orchard Brooke Living Centre, operated by Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC and Absolut at Orchard Brook, LLC, pursuant to which 6060 Armor Road, LLC borrowed \$17,776,000 from Capital Funding, on or about June 16, 2011; and (v) Absolut Center for Nursing and Rehabilitation at Three Rivers, operated by Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC, pursuant to which 101 Creekside Drive, LLC borrowed from Capital Funding \$12,848,500, on or about September 26, 2013.

5. Capital Funding hereby incorporates Capital Finance's Limited Objection to the DIP Financing Motion [Doc. No. 60] into this Objection, to the extent such objection is not inconsistent with any of the relief, protections, and reservations sought by Capital Funding.

6. In addition, through discussions with Debtors' counsel, it is our understanding that nothing contained in either any Interim or Final Orders is intended to alter or affect, impair or subordinate any security interests, liens or claims of existing lienholders, including Capital Funding. Capital Funding intends to work with the Debtors to include

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Rehabilitation at Houghton, LLC and Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC's assets to Capital Funding.

language in any Interim and Final Orders to ensure that such claims and interests are not impaired, and is filing this Objection, in part, in the event the parties are unable to reach a consensual resolution.

WHEREFORE, Capital Funding respectfully requests that the Court sustain its Objection, and grant Capital Funding such other and further relief as is just and proper.

Dated: Tarrytown, New York  
October 1, 2019

WHITEFORD, TAYLOR & PRESTON LLP

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